

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CHAD M. CARLSEN and SHASTA L.
CARLSEN, husband and wife,
individually and on behalf of a Class of
similarly situated Washington families,

Plaintiffs,

vs.

FREEDOM DEBT RELIEF, LLC, a
Delaware limited liability company;
FREEDOM FINANCIAL NETWORK,
LLC, a Delaware limited liability
company; ANDREW HOUSSEY, a
resident of California; and BRADFORD
STROH, a resident of California; JOHN
DOES 1-5; and JANE DOES 1-5,

Defendants.

No. CV-09-00055-LRS

CLASS ACTION

**PROTECTIVE ORDER
GOVERNING CONFIDENTIAL
INFORMATION**

This Protective Order is meant to govern the use of, and protect from public disclosure, any non-public and confidential or proprietary information used or disclosed in this litigation.

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which protection from public disclosure and from use for any purpose other than prosecuting this

1 litigation would be warranted. Accordingly, the following Protective Order is
2 entered. This Order does not confer blanket protections on all disclosures or
3 responses to discovery and the protection it affords extends only to the limited
4 information or items that are entitled under the applicable legal principles to
5 treatment as confidential. The parties further acknowledge, as set forth in Section
6 10, below, that this Order creates no entitlement to file confidential information
7 under seal, and that any party wishing to file documents under seal must comply
8 with all applicable rules.

9 **2. DEFINITIONS**

10 2.1 Party: Any party to this action, including all of its officers, directors,
11 employees, consultants, retained experts, and outside counsel (and their respective
12 support staff).

13 2.2 Disclosure or Discovery Material: All items or information,
14 regardless of the medium or manner generated, stored, or maintained (including,
15 among other things, testimony, transcripts, or tangible things) that are produced or
16 generated in disclosures or responses to discovery in this matter.

17 2.3 “CONFIDENTIAL” Information or Items: Information (regardless of
18 how generated, stored or maintained) or tangible things that qualify for protection
19 under applicable Fed. R. Civ. P. 26(c) standards.

20 2.4 Receiving Party: A Party that receives Disclosure or Discovery
21 Material from a Producing Party.

22 2.5 Producing Party: A Party or non-party that produces Disclosure or
23 Discovery Material in this action.

24 2.6 Designating Party: A Party or non-party that designates information
25 or items that it produces in disclosures or in responses to discovery as
26 “Confidential.”

1 2.7 Protected Material: Any Disclosure or Discovery Material that is
2 designated as “Confidential” pursuant to the terms of this Order.

3 2.8 Outside Counsel: Attorneys who are not employees of a Party but
4 who are retained to represent or advise a Party in this action, along with their
5 associated support staff.

6 2.9 In-House Counsel: Attorneys who are employees of a Party, along
7 with their associated support staff.

8 2.10 Counsel (without qualifier): Outside Counsel and In-House Counsel
9 (and their associated support staff).

10 2.11 Expert: A person with specialized knowledge or experience in a
11 matter pertinent to the litigation who has been retained by a Party or its Counsel to
12 serve as an expert witness or as a consultant in this action and who is not a past or
13 a current employee of a Party or of a competitor of a Party and who, at the time of
14 retention, is not anticipated to become an employee of a Party or a competitor of a
15 Party. This definition includes professional jury or trial consultants retained in
16 connection with this litigation.

17 2.12 Professional Vendors: Persons or entities that provide litigation
18 support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or
19 demonstrations; organizing, storing, retrieving data in any form or medium; etc.)
20 and their employees and subcontractors.

21 **3. SCOPE**

22 The protections conferred by this Order cover not only Protected Material,
23 but also any information copied or extracted therefrom, as well as all copies,
24 excerpts, summaries, or compilations thereof, plus testimony, conversations, or
25 presentations by Parties or Counsel to or in Court or in other settings that might
26 reveal Protected Material.

1 **4. DURATION**

2 Even after the termination of this litigation, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designating Party agrees
4 otherwise in writing or a Court order otherwise directs.

5 **5. DESIGNATING PROTECTED MATERIAL**

6 5.1 Exercise of Restraint and Care in Designating Material for Protection.

7 Each Party or non-party that designates information or items for protection under
8 this Order must take care to limit any such designation to specific material that
9 qualifies under the appropriate standards. A Designating Party must take care to
10 designate for protection only those parts of material, documents, items, or oral or
11 written communications that qualify such that other portions of the material,
12 documents, items, or communications for which protection is not warranted are not
13 swept unjustifiably within the ambit of this Order.

14 Designations that are shown to be clearly unjustified, or that have
15 been made for an improper purpose (*e.g.*, to unnecessarily encumber or retard the
16 case development process, or to impose unnecessary expenses and burdens on
17 other parties), expose the Designating Party to sanctions.

18 If it comes to a Party's or a non-party's attention that information or
19 items that it designated for protection do not qualify for protection at all, that Party
20 or non-party must promptly notify all other parties that it is withdrawing the
21 mistaken designation.

22 5.2 Manner and Timing of Designations. Except as otherwise provided in
23 this Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise
24 stipulated or ordered, material that qualifies for protection under this Order must be
25 clearly so designated before the material is disclosed or produced. Designation
26 in conformity with this Order requires:

1 (a) For information in documentary form (apart from transcripts of
2 depositions or other pretrial or trial proceedings): The Producing Party shall affix
3 the legend “CONFIDENTIAL” prominently on each page that contains Protected
4 Material. If only a portion or portions of the material on a page qualifies for
5 protection, the Producing Party also must clearly identify the protected portion(s)
6 (e.g., by making appropriate markings in the margins).

7 A Party or non-party that makes original documents or
8 materials available for inspection need not designate them for protection until after
9 the inspecting Party has indicated which material it would like copied and
10 produced. During the inspection and before the designation, all of the material
11 made available for inspection shall be deemed “CONFIDENTIAL.” After the
12 inspecting Party has identified the documents it wants copied and produced, the
13 Producing Party must determine which documents, or portions thereof, qualify for
14 protection under this Order, then, before producing the specified documents, the
15 Producing Party must affix the appropriate legend (“CONFIDENTIAL”)
16 prominently on each page that contains Protected Material. If only a portion or
17 portions of the material on a page qualifies for protection, the Producing Party also
18 must clearly identify the protected portion(s) (e.g., by making appropriate
19 markings in the margins).

20 (b) For testimony given in deposition or in other pretrial or trial
21 proceedings: The Party or non-party offering or sponsoring the testimony shall
22 identify on the record, before the close of the deposition, hearing, or other
23 proceeding, all protected testimony. When it is impractical to identify separately
24 each portion of testimony that is entitled to protection, and when it appears that
25 substantial portions of the testimony may qualify for protection, the Party or non-
26 party that sponsors, offers, or gives the testimony may invoke on the record (before

1 the deposition or proceeding is concluded) a right to have up to 20 days after
 2 receipt of the transcript of the testimony in which to identify the specific portions
 3 of the testimony as to which protection is claimed. Only those portions of the
 4 testimony that are appropriately designated for protection within the 20 days shall
 5 be covered by the provisions of this Order.

6 Transcript pages containing Protected Material must be
 7 separately bound by the court reporter, who must affix prominently on each such
 8 page the legend "CONFIDENTIAL" as instructed by the Party or nonparty
 9 offering or sponsoring the witness or presenting the testimony.

10 (c) For information produced in some form other than
 11 documentary, and for any other tangible items: The Producing Party shall affix in
 12 a prominent place on the exterior of the container or containers in which the
 13 information or item is stored the legend "CONFIDENTIAL." If only portions of
 14 the information or item warrant protection, the Producing Party, to the extent
 15 practicable, shall identify the protected portions.

16 (d) For information requiring production in native or non-
 17 documentary electronic form (e.g., a database): By its nature, certain electronic
 18 information is impracticable to designate for confidentiality on a documentary or
 19 item by item basis. In such instances, the Producing Party shall therefore affix in a
 20 prominent place on the exterior of the container or containers in which the
 21 electronic information is stored or transmitted (e.g., a physical CD-ROM or hard
 22 disk drive) the legend "CONFIDENTIAL." The Receiving Party shall mark any
 23 documents it prints from such designated files "CONFIDENTIAL" and treat them
 24 as such, in accordance with the provisions of this Order.

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 26 failure to designate qualified information or items as "CONFIDENTIAL" does not,

1 standing alone, waive the Designating Party's right to secure protection under this
2 Order for such material. If material is promptly and appropriately designated as
3 "CONFIDENTIAL" after the material was initially produced, the Receiving Party,
4 on timely notification of the designation, must make reasonable efforts to assure
5 that the material is treated in accordance with the provisions of this Order.

6 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
8 Party's confidentiality designation is necessary to avoid foreseeable substantial
9 unfairness, unnecessary economic burdens, or a later significant disruption or delay
10 of the litigation, a Party does not waive its right to challenge a confidentiality
11 designation by electing not to mount a challenge promptly after the original
12 designation is disclosed.

13 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
14 Designating Party's confidentiality designation must do so in good faith and must
15 begin the process by conferring directly (in voice to voice dialogue; other forms of
16 communication are not sufficient) with counsel for the Designating Party. In
17 conferring, the challenging Party must explain the basis for its belief that the
18 confidentiality designation was not proper and must give the Designating Party an
19 opportunity to review the designated material, to reconsider the circumstances and
20 to either change the designation or explain the basis for standing on the chosen
21 designation in a timely manner. A challenging Party may proceed to the next stage
22 of the challenge process only if it has engaged in this meet and confer process first,
23 which process is not to exceed 15 days.

24 6.3 Judicial Intervention. After the 15 day period to meet and confer has
25 elapsed, a Party that elects to press a challenge to a confidentiality designation after
26 considering the justification offered by the Designating Party may file and serve a

1 motion that identifies the challenged material and sets forth in detail the basis for
 2 the challenge. Each such motion must be accompanied by a competent declaration
 3 that affirms that the movant has complied with the meet and confer requirements
 4 imposed in the preceding paragraph and that sets forth with specificity the
 5 justification for the confidentiality designation that was given by the Designating
 6 Party in the meet and confer dialogue.

7 The burden of persuasion in any such challenge proceeding shall be
 8 on the Designating Party. Until the court rules on the challenge, all parties shall
 9 continue to afford the material in question the level of protection to which it is
 10 entitled under the Producing Party's designation.

11 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 13 disclosed or produced by another Party or by a non-party in connection with this
 14 case only for prosecuting, defending, or attempting to settle this litigation. Such
 15 Protected Material may be disclosed only to the categories of persons and under
 16 the conditions described in this Order. When the litigation has been terminated, a
 17 Receiving Party must comply with the provisions of section 11, below (FINAL
 18 DISPOSITION).

19 Protected Material must be stored and maintained by a Receiving Party at a
 20 location and in a secure manner that ensures that access is limited to the persons
 21 authorized under this Order.

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
 23 otherwise ordered by the court or permitted in writing by the Designating Party, a
 24 Receiving Party may disclose any information or item designated
 25 CONFIDENTIAL only to:
 26

1 (a) the Receiving Party's Outside Counsel of record in this action,
2 as well as employees of said Counsel to whom it is reasonably necessary to
3 disclose the information for this litigation and who have signed the "Agreement to
4 Be Bound by Protective Order" that is attached hereto as Exhibit A;

5 (b) the officers, directors, and employees (including In-House
6 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
7 this litigation and who have signed the "Agreement to Be Bound by Protective
8 Order" (Exhibit A);

9 (c) Experts (as defined in this Order) of the Receiving Party to
10 whom disclosure is reasonably necessary for this litigation and who have signed
11 the "Agreement to Be Bound by Protective Order" (Exhibit A);

12 (d) the Court and its personnel;

13 (e) court reporters, their staffs, and Professional Vendors to whom
14 disclosure is reasonably necessary for this litigation and who have signed the
15 "Agreement to Be Bound by Protective Order" (Exhibit A);

16 (f) during their depositions, witnesses in the action to whom
17 disclosure is reasonably necessary and who have signed the "Agreement to Be
18 Bound by Protective Order" (Exhibit A). Pages of transcribed deposition
19 testimony or exhibits to depositions that reveal Protected Material must be
20 separately bound by the court reporter and may not be disclosed to anyone except
21 as permitted under this Order.

22 (g) the author of the document or the original source of the
23 information.

1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
 2 **PRODUCED IN OTHER LITIGATION**

3 If a Receiving Party is served with a subpoena or an order issued in other
 4 litigation that would compel disclosure of any information or items designated in
 5 this action as “CONFIDENTIAL,” the Receiving Party must so notify the
 6 Designating Party in writing (by fax or email, if possible) immediately and in no
 7 event more than three court days after receiving the subpoena or order. Such
 8 notification must include a copy of the subpoena or court order.

9 The Receiving Party also must immediately inform in writing the party who
 10 caused the subpoena or order to issue in the other litigation that some or all the
 11 material covered by the subpoena or order is subject to the terms of this Order. In
 12 addition, the Receiving Party must deliver a copy of this Order promptly to the
 13 party in the other action that caused the subpoena or order to issue.

14 The purpose of imposing these duties is to alert the interested parties to the
 15 existence of this Order and to afford the Designating Party in this case an
 16 opportunity to try to protect its confidentiality interests in the court from which the
 17 subpoena or order issued. The Designating Party shall bear the burdens and the
 18 expenses of seeking protection in that court of its confidential material, and
 19 nothing in these provisions should be construed as authorizing or encouraging a
 20 Receiving Party in this action to disobey a lawful directive from another court.

21 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

22 If a Receiving Party learns that, by inadvertence or otherwise, it has
 23 disclosed Protected Material to any person or in any circumstance not authorized
 24 under this Order, the Receiving Party must immediately (a) notify in writing the
 25 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
 26 all copies of the Protected Material, (c) inform the person or persons to whom

1 unauthorized disclosures were made of all the terms of this Order, and (d) request
2 such person or persons to execute the “Acknowledgment and Agreement to Be
3 Bound” that is attached hereto as Exhibit A.

4 **10. FILING PROTECTED MATERIAL**

5 Without written permission from the Designating Party or a court order
6 secured after appropriate notice to all interested persons, a Party may not file in the
7 public record in this action any Protected Material. A Party that seeks to file under
8 seal any Protected Material must comply with all applicable rules for doing so.

9 **11. FINAL DISPOSITION**

10 Unless otherwise ordered or agreed in writing by the Producing Party, within
11 sixty days after the final termination of this action, each Receiving Party must
12 return all Protected Material to the Producing Party. As used in this subdivision,
13 “all Protected Material” includes all copies, abstracts, compilations, summaries or
14 any other form of reproducing or capturing any of the Protected Material. With
15 permission in writing from the Designating Party, the Receiving Party may destroy
16 some or all of the Protected Material instead of returning it. Whether the Protected
17 Material is returned or destroyed, the Receiving Party must submit a written
18 certification to the Producing Party (and, if not the same person or entity, to the
19 Designating Party) by the sixty-day deadline that identifies (by category, where
20 appropriate) all the Protected Material that was returned or destroyed and that
21 affirms that the Receiving Party has not retained any copies, abstracts,
22 compilations, summaries or other forms of reproducing or capturing any of the
23 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
24 an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
25 correspondence or attorney work product, even materials containing Protected
26

1 Material. Any such archival copies that contain or constitute Protected Material
2 remain subject to this Order as set forth in Section 4 (DURATION), above.

3 **12. INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL**

4 If Discovery Material or other information subject to a claim of attorney-
5 client privilege, work-product immunity, or any other applicable claim of privilege
6 or immunity is inadvertently produced or otherwise disclosed to any other Party or
7 non-party, such production or disclosure shall in no way prejudice or otherwise
8 constitute a waiver of, or estoppel as to, any claim of privilege or immunity for
9 such Discovery Material or other information. Discovery Material or other
10 information subject to a claim of privilege or immunity must be returned as soon as
11 it is discovered, without any need to show the production was inadvertent. The
12 Receiving Party shall not use the inadvertently produced Discovery Material or
13 other information for any purpose other than in connection with a motion to
14 compel in this matter.

15 Upon request by the Producing Party pursuant to this Section, the Receiving
16 Party shall immediately return all copies of such document(s) or thing(s) and shall
17 destroy any newly created derivative document such as a summary or comment on
18 the inadvertently produced information. The Receiving Party may then move the
19 Court for an Order compelling production of such information, but the motion shall
20 not assert as a ground for production the fact or circumstances of the inadvertent
21 production. If a claim is disputed, the Receiving Party shall not use or disclose any
22 Discovery Material or other information for which a claim of privilege or
23 immunity is made pursuant to this Section for any purpose until the matter is
24 resolved by agreement of the parties or by a decision of this Court.

1 **13. MISCELLANEOUS**

2 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 Party to seek its modification by the Court in the future.

4 13.2 Right to Assert Other Objections. No Party waives any right it
5 otherwise would have to object to disclosing or producing any information or item
6 on any ground not addressed in this Order. Similarly, no Party waives any right to
7 object on any ground to use in evidence of any of the material covered this Order.

8
9 DATED this 18th day of May, 2010.

10 *s/Lonny R. Suko*

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12 _____
13 LONNY R. SUKO
14 Chief Judge, United States District Court
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EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
 _____ [print or type full address], declare under
 penalty of perjury that I have read in its entirety and understand the Protective
 Order that was issued by the United States District Court for the Eastern District of
 Washington on _____ [date] in *Carlsen, et al. v. Freedom Debt Relief,
 LLC et al.*, Case No. CV-09-00055-LRS. I agree to comply with and be bound by
 all the terms of the Protective Order and I understand and acknowledge that failure
 to so comply could expose me to sanctions and punishment in the nature of
 contempt. I solemnly promise that I will not disclose in any manner any
 information or item that is subject to this Protective Order to any person or entity
 except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
 Court for the Eastern District of Washington for the purpose of enforcing the terms
 of this Protective Order, even if such enforcement proceedings occur after
 termination of this action.

I hereby appoint _____ [print or type full name]
 of _____ [print or type full address and
 telephone number] as my Washington agent for service of process in connection
 with this action or any proceedings related to enforcement of this Protective Order.

Dated: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____